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Attorneys For Defendants TECHNICHEM, INC., MARK J. NG,  
and STEPHEN S. TUNG

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VIRGINIA PELLEGRINI, Trustee of the  
Mario J. and Virginia E. Pellegrini Trust,  
and VIRGINIA PELLEGRINI, an  
individual

Plaintiff,

v.

TECHNICHEM, INC., a California  
corporation; MARK J. NG, an individual;  
and STEPHEN S. TUNG, an individual,

Defendants.

Case No. 07-CV-02497-CRB

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
STAY ACTION PENDING  
GOVERNMENT REMEDIATION**

**[FRCP 7(b)]**

Hearing Date: July 25, 2008  
Time: 10:00 a.m.  
Courtroom: 8, 19<sup>th</sup> Floor  
Judge: Charles R. Breyer

Complaint Filed: May 9, 2007  
Trial Date: October 6, 2008

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

**PLEASE TAKE NOTICE** that on July 25, 2008 at 10:00 a.m., or as soon  
thereafter as the matter may be heard before in the above-entitled court, Courtroom  
8, 19th Floor, located at 450 Golden Gate Avenue, San Francisco, California, the  
Court will hear the motion by defendants Technichem, Inc., Mark J. Ng, and  
Stephen S. Tung to stay further proceedings in this case pending the investigation  
and remediation by the California Department of Toxic Substances Control  
("DTSC") of the subject property.

This motion is made pursuant to Rule 7(b) of the Federal Rules of Civil  
Procedure on the grounds that at an informal meeting with the parties to this

1 litigation, the Department of Toxic Substances Control (“DTSC”) recently  
 2 indicated that it is designating the subject property as an “orphan” property and  
 3 will conduct its own investigation and remediation, regardless of the status of this  
 4 lawsuit. The Court should stay this litigation pending the outcome of the DTSC’s  
 5 actions in order to ascertain the costs of remediation, which both parties admit is  
 6 currently unknown.

7 This motion is based on this Notice, the Memorandum of Points and  
 8 Authorities filed herewith, the Declaration of Brian Ledger, the pleadings and  
 9 papers filed herein, and such other oral and documentary evidence as may be  
 10 presented at or by the hearing on said motion.

11 PLEASE TAKE FURTHER NOTICE that at the time and place  
 12 described above, Defendants will request the Court to sign the proposed Order  
 13 submitted herewith.  
 14

15 Dated: June 20, 2008

**GORDON & REES LLP**

16  
 17 /s/ Paul A. Henreid  
 18 Brian M. Ledger  
 19 Paul A. Henreid  
 20 Attorneys for Defendants  
 21 TECHNICHEM, INC., MARK J. NG, and  
 22 STEPHEN S. TUNG  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I. INTRODUCTION**

4 The Court should stay this litigation because the California Department of  
5 Toxic Substances Control (“DTSC”) recently indicated that it is designating the  
6 subject property as an “orphan” property and will conduct its own investigation  
7 and remediation. The Court should stay this litigation pending the outcome of the  
8 DTSC’s actions in order to ascertain the costs of remediation, which both parties  
9 admit is currently unknown.

10 **II. FACTUAL BACKGROUND**

11 Plaintiffs filed this environmental cost recovery action on May 9, 2007 and a  
12 First Amended Complaint (“FAC”) on April 30, 2008. The operative complaint is  
13 complex, consisting of 49 pages, 22 causes of action, and 256 paragraphs.  
14 Plaintiffs allege they are owners of industrial property in Emeryville, California  
15 where defendants Technichem, Inc., Mark J. Ng, and Stephen S. Tung  
16 (“Defendants”) operated a chemical recycling business. (FAC ¶¶ 44-50) Plaintiffs  
17 allege that Defendants caused the release of hazardous substances at their property,  
18 including but not limited to perchloroethylene. (FAC ¶¶ 38-39) As a result,  
19 plaintiffs claim they have been unable to sell or lease the property, incurred  
20 investigation expenses and legal fees, and will have to pay for future cleanup to  
21 satisfy the State of California, Department of Toxic Substances Control (“DTSC”).  
22 (FAC ¶¶ 40, 88) Plaintiffs seek injunctive relief to force Defendants to remediate  
23 the contamination, indemnification for their costs (including attorneys’ fees), and  
24 punitive damages. (Prayer for Relief)

25 In June 2008, the parties to this litigation and their counsel attended an  
26 informal mediation with coverage counsel for Zurich Insurance Company and  
27 several staff and legal counsel for DTSC. *See* Declaration of Brian Ledger  
28 (“Ledger Decl.”) ¶ 3. At this meeting, DTSC confirmed its desire to remediate the

1 property regardless of the status of this lawsuit. *Id.* The DTSC also indicated that  
 2 it is designating the subject property as an “orphan” property and will conduct its  
 3 own investigation and remediation. *Id.*

4 Defendants and Plaintiffs admit that they do not know the cost of  
 5 remediation to the subject property necessary to achieve facility closure from the  
 6 DTSC. Ledger Decl. ¶ 4; Plaintiff’s Response to Request for Admission No. 6  
 7 attached hereto as Exhibit A. DTSC’s actions will help determine the costs of  
 8 remediation at the subject property, and therefore plaintiffs’ damages in this case.  
 9 Ledger Decl. ¶ 5.

### 10 **III. LEGAL STANDARD**

11 Rule 7(b) of the Federal Rules of Civil Procedure states: “A request for a  
 12 court order must be made by motion.” With respect to the instant motion, “the  
 13 power to stay proceedings is incidental to the power inherent in every court to  
 14 control the disposition of the causes on its docket with economy of time and effort  
 15 for itself, for counsel, and for litigants. How this can best be done calls for the  
 16 exercise of judgment, which must weigh competing interests and maintain an even  
 17 balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-255 (1936).

### 18 **IV. ARGUMENT**

19 The Court should stay this litigation because the DTSC recently indicated  
 20 that it is designating the subject property as an “orphan” property and will conduct  
 21 its own investigation and remediation. The Court should stay this litigation  
 22 pending the outcome of the DTSC’s actions in order to ascertain the costs of  
 23 remediation. Defendants and Plaintiffs admit that they do not know the cost of  
 24 remediation to the subject property necessary to achieve facility closure from the  
 25 DTSC. Ledger Decl. ¶ 4; Plaintiff’s Response to Request for Admission No. 6  
 26 attached hereto as Exhibit A. It would be futile to continue this lawsuit and force  
 27 the parties to retain experts and spend substantial resources trying to estimate the  
 28

1 costs of DTSC's remediation while DTSC is conducting the remediation.  
 2 Damages and costs of remediation will no longer be an issue once DTSC  
 3 completes its investigation and remediation. The Court should exercise its  
 4 judgment by staying this litigation pending the DSTC remediation because it is in  
 5 the interests and "economy of time and effort for itself, for counsel, and for  
 6 litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254-255 (1936).

## 7 V. CONCLUSION

8 For the foregoing reasons, the Court should stay further proceedings in this  
 9 case pending the investigation and remediation by the California Department of  
 10 Toxic Substances Control of the subject property.

11 Dated: June 20, 2008

**GORDON & REES LLP**

12  
13 /s/ Paul Henreid

Brian M. Ledger

Paul A. Henreid

Attorneys for Defendants

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15 TECHNICHEM, INC., MARK J. NG, and  
16 STEPHEN S. TUNG  
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**DECLARATION OF BRIAN M. LEDGER**

I, Brian M. Ledger, declare as follows:

1. I am an attorney at law, duly licensed to practice law in the State of California. I am a partner in the law firm of Gordon & Rees, LLP, and lead trial counsel for defendants TECHNICHEM, INC., MARK J. NG, and STEPHEN S. TUNG (collectively "Defendants"). If called and sworn as a witness, I could competently testify to the matters stated in this declaration as being true and correct, based upon my personal knowledge of such matters.

2. I make this declaration in support of Defendants' Motion to Stay Action Pending Government Remediation.

3. In June 2008, the parties to this litigation and their counsel attended an informal mediation with coverage counsel for Zurich Insurance Company and several staff and legal counsel for the California Department of Toxic Substances Control ("DTSC"). At this meeting, DTSC confirmed its desire to remediate the property regardless of the status of this lawsuit. The DTSC also indicated that it is designating the subject property as an "orphan" property and will conduct its own investigation and remediation.

4. Defendants and Plaintiffs admit that they do not know the future cost of remediation of the subject property necessary to achieve facility closure from the DTSC.

5. The future costs of remediation cannot be determined until the DTSC has completed its actions at the subject property and determined what is necessary for facility closure.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: June 20, 2008

/s/ Brian M. Ledger  
Brian M. Ledger

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